

DELEGATE DUKES: Would that agree with your committee's position?

DELEGATE MUDD: Yes, sir.

DELEGATE DUKES: The other question, as I understood your answer to my questions yesterday afternoon and last night, would mean that a functional division could not be established within a particular superior court, which would have separate rules other than the rest of the court which would have a different area of jurisdiction.

Now, my particular question is, is there any reason why the Court of Appeals could not establish a rule which says that the superior court can have, if it has divorce jurisdiction, a family court, and establish separate rules for that family division, different from the regular rules of the superior court?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: You mean as to practice and procedure?

DELEGATE DUKES: Yes.

DELEGATE MUDD: Well, of course—

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: The answer to that question is probably what interpretation would be put on the rules as to whether or not it interfered with the uniformity of jurisdiction. I see no problem with a functional division of the superior court dealing with several phases before one judge or one functional division within the jurisdiction assigned by law to that superior court such as a family court dealing with divorce matters or support, anything within the equity jurisdiction of the court.

THE CHAIRMAN: Delegate Dukes, if you would pardon the Chair I think I could ask Delegate Mudd if he might clarify that answer.

Delegate Mudd, do the Court of Appeals' rules of procedure today provide differently in law cases than in equity cases, that is, in law courts and in equity courts?

DELEGATE MUDD: Yes, in some instances. Therefore there could be different rules.

THE CHAIRMAN: Within a functional division in the court?

DELEGATE MUDD: Yes.

THE CHAIRMAN: Does any delegate desire to speak in favor?

DELEGATE WILLONER: Mr. Chairman, I rise again as I did a few minutes ago, not to attack the detail of what will be the right of the court to provide for establishment of functional divisions by rule, but to attack the principle that is again involved here. As was just explained by Mr. Mudd, we could have set up by the court of appeals a separate function. It would be exclusively within the jurisdiction of the court to establish the rules for it.

It seems to me once again we have to make a judgment whether we feel that this power can be given to the courts without any veto, without any check whatsoever, and in answer to my remarks earlier the only answer was that, well, we can impeach the judges and they notify the public when they discuss these rule changes.

It seems to me that the much more effective way is the way that we handle the legislature, it gets far more publicity than the rules meetings. The effect of the veto is a far more reasonable use.

I do not believe we have ever impeached a Maryland judge. The point I am making is this: that we must once again make the judgment whether or not we want to delegate this power to make law without any check whatsoever. I feel that that is a great departure in the principle of government which we have discussed here so far.

THE CHAIRMAN: Does any delegate desire to speak in opposition?

Delegate Marion?

DELEGATE MARION: Mr. Chairman, for those who would say that this is the granting of some unusual power to the courts, I say they are mistaken. This is not a question so much of power but one of responsibility in connection with administration of the courts.

I think that the language which we have tried to include, relating to functional divisions, both in this section and in section 5.10, relate far more to the assignment of judges to handle particular matters within a larger jurisdiction than to questions of power. It is one of administration of the courts and of assignment of judges. We try later on to give the authority to assign judges appropriately throughout this entire judicial system, and I think that the creation of the functional divisions by rule is not inconsistent with it.

We have tried to strike a balance in the Committee between those things which do